IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.MC.No. 3228 of 2007()

CC.433/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER: ACCUSED

ANIL KUMAR V.S., S/O. SASIDHARAN PILLAI,
RESIDING AT VADAKKEMAVIYIL, KANJIRAPPALLI,
KOTTAYAM DISTRICT.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS: COMPLAINANT AND STATE

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. STATION HOUSE OFFICER,
PAYYANNUR POLICE STATION, PAYYANNUR.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3228 of 2007

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Dated this the 19th day of October, 2007

O R D E R

The petitioner faces indictment in a prosecution for the offences punishable, inter alia, under Section 304A I.P.C. All offences alleged are summons offences. The police have conducted the investigation. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Summons has been issued to the petitioner. He, on receipt of summons, has rushed to this Court. He contends that the allegations are groundless and therefore the petitioner does not deserve to stand the trauma of an unnecessary criminal prosecution. It is, in these circumstances, prayed that powers under Section 482 Cr.P.C. may be invoked and the proceedings against the petitioner may be quashed.

2. I am of the opinion that this is an eminently fit case where the petitioner must appear before the learned Magistrate and seek stoppage of proceedings under Section 258 Cr.P.C. In every case, where allegations are said to be groundless, it is not necessary for the High Court to go through the entire records to ascertain whether there is any sufficient reason to proceed further against the accused. That

function must legitimately be exercised by the trial court. The mere fact that the accused may be entitled for discharge under Section 239/240, 245/246 or 258/251 Cr.P.C. is not by itself sufficient to justify the invocation of the jurisdiction under Section 482 Cr.P.C. Not that this Court does not have jurisdictional competence in an appropriate case to invoke the jurisdiction under Section 482 Cr.P.C. and quash the proceedings, but such invocation must be restricted only to exceptional cases in the interests of justice. Is there failure of justice? Is there miscarriage of justice? Is there abuse of process of the court? These are the questions which must weigh with the court while considering the powers under Section 482 Cr.P.C. The petitioner must, in these circumstances, appear before the learned Magistrate and claim dropping of proceedings under Section 258 Cr.P.C. as held in **Dr. Kamala Rajaram** v. **D.Y.S.P. office of the S.P.(Rural) & anr.** (2005 (2) LJ 491).

3. The learned counsel for the petitioner submits that if unnecessary insistence were made on personal appearance of the petitioner, that would cause unnecessary hardships, inconvenience and prejudice to the petitioner. The offences alleged are only a summons offences. The petitioner can appear through counsel and claim exemption from personal appearance.

His personal presence need not be insisted for consideration of the question of stoppage of proceedings under Section 258 Cr.P.C. I need only say that the learned Magistrate must permit the petitioner to appear through counsel and advance his claim for stoppage of proceedings under Section 258 Cr.P.C.

4. With the above observations this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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